

Analysis: Post-War Ground Realities of Dissolving Territories and Protracted Displacement of Eelam Tamils in Sri Lanka

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An Analysis of the Militarization and Land Confiscation under the Lens of Persecution and Forcible Displacement as Crimes Against Humanity

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This article assesses the militarization and post-war confiscation of lands by the Government of Sri Lanka against Eelam Tamils in the North-East under the lens of persecution and forcible transfer of population as crimes against humanity.

Introduction

Nine years after the end of the war, the Government of Sri Lanka has yet to effectively instate durable measures to demilitarise areas in the North-East. The post-war ground realities for Eelam Tamil civilians, including internally displaced persons (IDPs), consists of ongoing military occupation of previously-owned Tamil land and impediments to their participation in civic, cultural and economic spheres of life, thereby infringing their fundamental rights. This article raises the question of whether the military occupation of private land and protracted displacement of Eelam Tamils in the North-East

constitutes the elements for the crimes against humanity of persecution and forcible transfer of population. In addressing this, the analysis finds that there is a credible legal argument that the Sri Lankan state and the military perpetrate the crimes against humanity of persecution and forcible displacement against Eelam Tamils.

Post-War Crisis of Land Confiscation Perpetrated against Eelam Tamils in the North-East

The post-war situation for Eelam Tamils remains bleak. There has been minimal progress on durable measures for transitional justice after the armed civil conflict ended.[1] Recently, in *Delayed or Denied? Sri Lanka's Failing Transitional Justice Process by the Numbers*, the People for Equality and Relief in Lanka (PEARL) reported that the Government has failed to effectively address critical issues, including the military occupation of confiscated lands, land return, protracted internal displacement, enforced disappearances, intimidation, security sector reform, war crimes during the war by the Sri Lankan military and the repeal of the *Prevention of Terrorism Act*.[2]

Among these issues, the Sri Lankan military's occupation of private land belonging to Tamil civilians is a critical issue for reconciliation in the post-war setting. For years, the Government implemented a state policy of acquiring private land held by Tamil IDPs in the North-East through measures such as those under the *Land Acquisition Act No. 9 of 1950.*[3] The *Land Acquisition Act No. 9 of 1950* is used by the Government to acquire private land for 'public purposes' under Section 2(1). Section 2(1) states, "where the Minister decides that land in any area is needed for any public purpose, he may direct the acquiring officer of the district in which that area lies to cause a notice in accordance with subsection (2) to be exhibited in some conspicuous places in that area."[4] This provision has been used as a tool by the Sri Lankan state to confiscate private lands belonging to Tamil IDPs. In addition, there has been prolonged military occupation of private lands under designated high-security zones (HSZ) created before, during and after the civil war. In response, Tamils have attempted to challenge the Government's refusal to return Tamil lands at the Court of Appeal and the Supreme Court without success.[5]

After the nearly three-decade war, the prevalent militarization and lack of durable solutions for access to homes, livelihood and economic life has disproportionately affected Tamil IDPs. To date, the Government of Sri Lanka has failed to keep its promises on demilitarization and land return.[6] In November 2017, President Sirisena stated that occupied lands would not be released from the military for national security reasons.[7] As of March 2018, the military has continued its occupation of lands in Mullaitivu[8], Vanni[9] and Kilinochchi[10] for its own facilities.[11] In October 2017, the Adayaalam Centre for Policy Research (ACPR) and the People for Equality and Relief in Lanka (PEARL) studied the militarization of the Mullaitivu District in which 2265.41 acres of land is occupied by the military out of 2516.9 square kilometres of total land in the area.[12] The post-war 'Buddhisization' of the North-East by creating Buddhist temples was further documented in areas where no Buddhists live aside from the predominantly Sinhala-Buddhist military.[13] Such findings raise credible concerns that the Government of Sri Lanka has undertaken a systematic regime of land grabs against Tamils to change the ethnic demographic of areas where Tamils reside. The question of whether this constitutes the three

chapeau elements for crimes against humanity to demonstrate that the Government of Sri Lanka has undertaken a systematic plan to attack Eelam Tamil civilians arises.

The Sri Lankan State's Systematic Plan to Attack Eelam Tamils under the Lens of the Four Contextual Elements for Crimes Against Humanity

The first *chapeau* element for crimes against humanity is that an attack pursuant to a state or organizational policy must exist according to Article 7(2) of the *Rome Statute of the International Criminal Court* (Rome Statute).[14] The 'state attack' need not be necessarily confined to a conventional military attack in armed conflict but rather, "could outlast, precede or run parallel to the armed conflict, without necessarily being part of it."[15] In *Akayesu*, the Trial Chamber of the International Criminal Tribunal for Rwanda (ICTR) recognized that it is not mandatory that the attack be violent but may be "a system of apartheid […] or exerting pressure on the population," to act in a specific way.[16] Therefore, it may encompass the mistreatment of a civilian population even after war.[17] The current practices by the Government of Sri Lanka arguably show that an attack is underway against Eelam Tamils in the North-East pursuant to a state plan. The adopted strategy appears to be to establish a heavy military presence in the North-East to politically, economically and culturally disenfranchise Tamils. The main rationale is stated as preventing post-war mobilizations for autonomy, separatism and state accountability. For example, in 2013, Major General Mahinda Hathurisinghe publicly claimed that a terrorist mindset exists within the Tamil population, which must be eradicated over time.[18] More recently, the narrative equating Tamil participation in civil and political life or equating devolution to terrorism has been used to justify the repression of Tamils. On May 18, 2018, Tamil Genocide Day, President Maithripala Sirisena stated that, "We have defeated the LTTE (Liberation Tigers of Tamil Eelam) physically and militarily, but their ideology has not died. Their agents in the diaspora in the LTTE's international network are very much alive."[19] This notion that all Tamils seeking provincial autonomy and state accountability represent the LTTE has underpinned the state strategy to establish a significant military presence in the North-East. The rationale is to effectively instantiate necessary military control of the local Tamil population and circumvent any political mobilizations for accountability or autonomy post-war. Consequently, the militarization of regions historically occupied by Eelam Tamils seems to be systematically undertaken by the Government to centralize political and physical control to exert pressure over civil and political life of Tamils.[20]

In addition, this state plan appears to be carried out even at the highest levels of the Government of Sri Lanka and by military personnel as discussed further below. It appears that state agents are the main perpetrators of the state-sponsored policy.[21] This high degree of coordination between the state and the military has granted the military the ability to occupy confiscated private land and perpetuate protracted displacement of Tamils in the North-East.[22] Furthermore, the state plan has been in force for the past nine years, during both the armed conflict and the post-war period.[23]

The second *chapeau* element requires that the attack be directed against a civilian population.[24] Specifically, to be a crime against humanity, the civilian population must constitute the primary target of the attack in a manner that is direct, and not incidental.[25] It can be reasonably inferred that the

attack by the Government of Sri Lanka is directed against a civilian population as required by the second contextual element for crimes against humanity.[26] In this case, Tamil citizens, including IDPs, are the civilian population targeted by the state policy carried out by the military.[27] Specifically, Tamils are targeted as perceived political sympathizers for separatism, which is characterized as a national security threat and not a claim for self-determination. The militarization of the North-East is also largely directed at private lands historically-held by Tamils.[28] This arguably shows that Tamil civilians as a people are targeted by the state attack.

In regard to the third *chapeau* element, the attack must be systematic.[29] In *Staniši?* and *Simatovi?*, 'systematic' is defined as "the organized nature of the acts of violence."[30] In addition, the Appeals Chamber in *Kunarac* referred to the *Blaški?* Trial Chamber to define systematic as including the existence of a political objective to persecute a community, the significant use of public, private and military resources, and the involvement of high-level military authorities in a well-planned regime.[31] Therefore, the strategic use of public resources such as the military to effectively execute the state policy may demonstrate the systematic nature of the attack. In this situation, the Government has arguably deployed the military to establish a heavy presence in private lands historically owned by Tamil civilians for the political objective of repressing Tamil separatism. Notably, it has used the *Land Acquisition Act No.9 of 1950*[32] and the designation of high-security zones (HSZs) to effectively seize private land belonging to Tamil IDPs who were forced to leave before, during or after the civil conflict.[33]

The organized use of such state resources and military personnel to carry out the attack arguably establishes its systematic character. The strategic use of land seizures to continually displace Tamils by military occupation of private land results in effective control by the government of political and civil life in the North-East. All of this appears to demonstrate that a systematic state attack by the Government is directed against Eelam Tamil civilians. The question of whether there is a nexus between the attack and the underlying acts of persecution and forcible displacement is discussed in the following sections.[34]

Military Occupation and Land Confiscation of Private Lands belonging to Eelam Tamils under the Lens of Persecution as a Crimes Against Humanity

Persecution under Article 7(2)(g) of the Rome Statute is "the intentional or severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity."[35] Land confiscation may qualify as a means of persecution in international criminal law. In *Kupreški?*, the Appeals Chamber held that "attacks on property can constitute persecution" if committed through gross or blatant denial of fundamental rights and on discriminatory grounds.[36] In *Tadi*?, the Trial Chamber stated that persecution as an international crime encompasses acts of physical, economic or judicial character that violate an individual's entitlement to a basic right.[37] In *Blaškic*, the Trial Chamber recognized that persecution may "take the form of confiscation or destruction of private dwellings or businesses…or means of subsistence belonging to the [targeted group]."[38] Furthermore, in *Kordi?* and *Cerke*z, the Trial Chamber stated, "In the context of an overall campaign of persecution, rendering a people homeless and with no means of economic support may be the method used to

‘coerce, intimidate, terrorize and forcibly transfer…civilians from their homes and villages.”[39] The Trial Chamber further stated that the destruction or seizure of property may constitute persecution.[40] Furthermore, in *Karadži?*, the Trial Chamber stated that persecution encompassed “the organized seizure of property undertaken within the framework of a systematic economic exploitation of occupied territory.”[41] In regard to the severity requirement, the Trial Chamber in *Kordi?*, held that the confiscation of individuals’ homes and means of livelihood fulfilled the gravity requirement.[42] Therefore, threats or infringements of property rights, such as the arbitrary state acquisition of Tamil private land may fall within the ambit of persecution as a crime against humanity.

The first element of persecution requires that the perpetrator severely deprive one or more persons of fundamental rights contrary to international law.[43] In this case, the fundamental right to security of the person of Tamil IDPs is engaged by land confiscation and military occupation. Notably, the confiscation of private land has detrimentally impacted the ability of Tamil IDPs to economically sustain themselves.[44] Tamil civilians have been systemically disenfranchised from accessing their private lands to sustain livelihoods for years.[45] In the armed conflict, the Government and the military seized private land for strategic military purposes in the North and East. The establishment and use of HSZs continues to date. For example, in Myliddy, the Tamil Guardian reported that the Sri Lankan Navy still partially occupies the Myliddy harbour, preventing local fisherman from sustaining livelihoods.[46] The International Crisis Group (ICG) reported in May 2017 that “the military resists returning additional occupied land to its owners in these areas and continues to run shops and hotels and build Buddha statutes in Tamil and Muslim communities.”[47] Evidently, the confiscation of private land detrimentally impacts the ability of Tamil IDPs to sustain livelihoods as they are systematically disenfranchised from accessing their private lands and from re-entering the local economy due to competition from the military.[48]

The military has also infiltrated post-war civil life by participating in agriculture, and running hotels and tourist resorts.[49]Among many military-run enterprises is the Thalsevana Resort in Kankasanthurai, Jaffna, which the Sri Lanka Campaign has noted is operated on land confiscated from local citizens as an alleged HSZ to maintain national security.[50] As a result, Tamil IDPs are subjected to poverty, lack of employment, poor infrastructure facilities and restricted access to water, land and religious facilities.[51] The arbitrary use of confiscated land by the military has severely hampered the ability for returnees to sustain a livelihood and even caused them to be dependent on the military for employment. Considering this, the Government has severely infringed on their fundamental right to security of the person through militarization pursuant to its state plan. It is critical to note such infringements committed by the Sri Lankan state are not justified by military necessity to ensure the security of Tamil civilians under international law. The concept of military necessity is only applicable to the Laws of Armed Conflict, and not in the absence of armed conflict, which is the current case in Sri Lanka.[52] Therefore, military necessity cannot be used by the Government or military to justify the appropriation of private Tamil land.

The second and third elements of persecution require an act or omission to be committed with a discriminatory intent held by the perpetrator. Therefore, the civilian population is targeted due to their

membership in a protected group.[53] In *Blaški?*, the Trial Chamber stated that persecution may occur by targeting property as long as the individual is "selected on grounds linked to their belonging to a particular community."[54] The ECCC Appeal Chamber in *Kaing* stated, "…the perpetrator may define the targeted victims based on a subjective assessment as to what group or groups pose a political threat or danger…"[55] In this case, the justification discussed earlier for the militarization of privately-owned Tamil land, in effect, causes political disenfranchisement by strategically positioning the military to control civil and political life in the areas Tamils historically and currently reside in. On this ground, the Government of Sri Lanka imposes militarization to specifically target Eelam Tamils arguably establishing discriminatory intent.

The fifth and sixth elements of persecution require that the conduct be committed as part of a systematic attack with the perpetrator's knowledge.[56] Essentially, the *mens rea* for persecution requires that the targeting be based on membership in a protected group. The jurisprudence establishes that political identity is a recognized ground of discrimination.[57] The statements made by state actors, such as President Sirisena and Major General Mahinda Hathurisinghe demonstrate that the state – the perpetrator – knowingly commits the militarization as part of the systematic state plan to attack Tamil civilians and suppress perceived threats.[58] Additionally, to constitute a crime against humanity, persecution must be committed with any other underlying act of Article 7(1) of the Rome Statute or any crime under the ICC jurisdiction.[59] The following section assesses this element by considering the crime against humanity of forcible transfer of population.

The Crisis of Protracted Displacement of Eelam Tamils under the Lens of Forcible Transfer of Population as a Crime Against Humanity

Forcible transfer is the movement of individuals under duress from where they reside to a place that is not of their choosing."[60] Under Article 7(2)(d) of the Rome Statute, forcible transfer of population is the "forced displacement of the persons concerned by expulsion and other coercive acts from the area in which they are lawfully present, without grounds permitted under international law."[61] In March 2016, the Centre for Policy Alternatives reported that 2115.77 acres of state land and 43.28 acres of private land were occupied in addition to 73.9475 of state land and over 6,400 acres of private land in Jaffna.[62] Additionally, the Society for Threatened Peoples reported that the Rajapaksha regime granted military appropriation of at least 200,000 acres of land in March 2016.[63] In an UNHCR survey, 81% of respondents stated they could not access their land because of military occupation.[64] For 2017, the U.S. Department of State reported that the majority of IDPs were unable to return to their homes due to military occupation of their land as part of HSZs, land mines, absence of access to livelihood and basic services.[65] In April, approximately 300 people of Iranaitheevu returned to their own occupied land in protest with extremely inadequate state support to enable them to earn a livelihood.[66] The residents in Keppapilavu have protested to return to their ancestral lands which are under military occupation for 'national security reasons'.[67] In this case, the military occupation of Tamil private land has been a significant cause of the forcible transfer of Tamil IDPs.[68] Such developments arguably demonstrate that a crisis of protracted displacement exists in post-war Sri Lanka and raises the question of whether this constitutes the crime against humanity of forcible transfer of population.

The first element of forcible displacement requires that the person(s) are transferred by expulsion or other coercive acts contrary to international law.[69] This encompasses coercive environments where the civilian(s) has no choice but to forcibly leave.[70] In *Naletili? and Martinovi?*, the Trial Chamber held that to determine whether the targeted population had a real choice, one must consider the choice "in the context of all relevant circumstances on a case by case basis. Specifically, the Appeals Chamber in *Krnojelac* held that being forced is not limited to physical force but encompasses the threat of force or coercion "caused by fear of violence… abuse of power or by taking advantage of a coercive environment."[71] In *Prli?*, it was held that forcible displacement occurs "in a climate of terror and violence obviates any and all value arising from the consent."[72]

This case strongly indicates that the protracted displacement of Tamils through such coercive militarization is without lawful justification under international law. The military use of confiscated private land owned by Tamil IDPs reinforces this. In 2016, the Oakland Institute reported that the military continued to occupy private lands belonging to Tamil IDPs in HSZs for army and naval camps.[73] In April 2018, the military re-seized land upon a recently renovated school called Kilinochchi Maha Vidyayalam.[74] Confiscated land has also been transformed into large-scale property development, businesses such as holiday resorts, restaurants, recreational activities reserved exclusively for military personnel and travel agencies run by the Ministry of Defence.[75] For example, the Sri Lankan military built a tennis court on a base on occupied land in Mullaitivu exclusively for military personnel.[76] In addition, the Ministries of Land and Tourism have engaged in the Sinhalisation, or effort to alter the ethnic demographics of regions populated by Tamils, through the creation of Sinhalese victory monuments and Buddhist viharas/religious altars in areas occupied by the military.[77] The Tamil Guardian reported that Tamil IDPs in Valikaamam North returned to their lands, released after 30 years of military occupation as a measure to resettle them onto their own lands, only to find their homes destroyed.[78] In July 2017, the Government released occupied land in Myliddy harbour for Tamil IDPs who faced extremely poor conditions with inadequate state support to continue their livelihood through fishing.[79] Therefore, the mass appropriation of private lands is unjustified under international law as it appears that there is no true public purpose for the confiscation that led to the coerced displacement of Tamils.

The second element of forcible displacement requires that the person(s) were lawfully present in the area from where they were transferred.[80] There is no need for title deeds or legal ownership of private land to qualify as lawful presence. In *Karadži?*, the Trial Chamber provided that being lawfully present was not equated to the legal concept of lawful residence.[81] In *Popovic,* the Trial Chamber held that lawful presence does not require legal entitlement to remain in an area but only requires residing in a location for a sufficient period of time.[82] Therefore, lawful presence is granted for those without actual legal claims to be an area, including IDPs.[83]

The third element is that the perpetrator was aware of circumstances establishing lawful presence.[84] The requisite *mens rea* that must be held by the perpetrator is that the forcible transfer of population is executed with the specific intent to displace the targeted population within national borders.[85] In addition, the targeted group need not be displaced permanently. Rather, it may merely be established

that the displacement was intentional, even if its trajectory is short-term.[86]

In regard to the fourth and fifth elements[87], there are credible grounds for concluding that the forcible transfer of population was executed as part of a systematic attack with the Government of Sri Lanka's knowledge.[88] Notably, the reference to the issuance of acquisition notices under section 2(1) of the *Land Acquisition Act No. 9 of 1950* by the Government demonstrates that it acknowledges that the appropriated lands for alleged public purposes were originally lawfully owned by Tamil IDPs who were lawfully present in the seized lands.[89] On such grounds, it may be reasonably inferred that the crime against humanity of persecution is committed through land confiscation and military occupation, which has largely facilitated the forcible transfer of population against Eelam Tamils by the Government of Sri Lanka under a systematic state attack.

International Criminal Justice for Eelam Tamils under the Sri Lankan State

In conclusion, there is a credible legal argument for the claim that the Government of Sri Lanka and the military have perpetrated the crimes against humanity of persecution and forcible transfer of population against Eelam Tamils in Sri Lanka. Reconciliatory efforts will continue to be derailed by the Government of Sri Lanka's own practices in this regard. Furthermore, international criminal prosecution should be considered as the Office of the Prosecutor of the International Criminal Court has specifically committed to investigating the unlawful dispossession of land.[90] The post-war ground realities perpetuate daily insecurities, disenfranchisement and oppression of Eelam Tamils as a people through such international crimes. Unless this and other critical issues are properly addressed such as through durable solutions for state accountability, de-militarization, land return and resettlement, Eelam Tamils will continue to be incessantly subjected to fugitive experiences in their homeland.

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Piratheeca Vimalarajah completed her Juris Doctor (Common Law) at the University of Ottawa Faculty of Law and her Master of Arts in International Affairs at the Norman Paterson School of International Affairs with a specialization in Conflict Analysis and Resolution. She has contributed to work to uphold

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References

1. People for Equality and Relief in Sri Lanka (PEARL Action), "Withering Hopes: Historic window of opportunity for reconciliation will close if Sri Lanka fails to act on accountability and militarization," April 2016 at 12-14, 34-35 [hereinafter referred to as *PEARL Withering Hopes*]; for a brief overview of the history of Sri Lanka's post-war developments, *see* People for Equality and Relief in Lanka (PEARL), "Delayed or Denied? Sri Lanka's Failing Transitional Justice Process," 14 May 2018 at 12-13 [hereinafter referred to as *PEARL Delayed or Denied*]
2. *Prevention of Terrorism* (Temporary Provision) *Act, No 48 of 1979;* this has been documented with relatively little action on the part of the Government of Sri Lanka. For example, see *Pearl Delayed or Denied*, *supra* note 1 at 10-13; Adayaalam Centre for Policy Research (ACPR), "Statement: ACPR condemns repression of May 18 memorialization efforts," 17 May 2017; Adayaalam Centre for Policy Research, "Joint Civil Society Statement: Call for the International Community to Re-Prioritize Accountability and Justice in Sri Lanka," 13 November 2017; Tamil Guardian, "280 missing Tamils identified to be in Sri Lanka's custody in final conflict days," 15 May 2018; Amnesty International, "Sri Lanka: Release lists of the forcibly disappeared," 17 May 2018; International Truth and Justice Project (ITJP), "ITJP Submission to the Committee Against Torture," 17 October 2016; the ITJP has also created a website with a working list of individuals reported as enforced disappearances by the Sri Lankan state; International Truth and Justice Project, "Disappearance,"; Human Rights Watch, "Locked Up Without Evidence: Abuses under Sri Lanka's Prevention of Terrorism Act," 29 January 2018; for further reference, *see* Sri Lanka Campaign for Peace and Justice, "Keep the Promise: Monitoring the Government of Sri Lanka's Commitments for Achieving Justice and Reconciliation".
3. *Land Acquisition Act No 9 of 1950* (*An Act to Make Provision for the Acquisition of Lands and Servitudes for Public Purposes and to Provide for Matters Connected with or Incidental to Such Provision),* 9 March 1950 [hereinafter referred to as the *Land Acquisition Act No. 9 of 1950*]; see for example, B Fonseka & Mirak Raheem, Centre for Policy Alternatives, "Land in the Eastern Province: Politics, Policy and Conflict," 2010.
4. *Ibid* at s 2(1).

The operationalized of the *Land Acquisition Act No.9 of 1950* and the use of high-sexurity zones (HSZ) is elaborated upon throughout this legal analysis. In addition, challenges have been initiated against the land seizures. *See* for example Guruparan Kumaravadivel, "Land acquisition by occupying military challenged in Sri Lanka Courts," 24 May 2013; Kumaravadivel referred to a writ-application filed by lawyers in Sri Lanka and the Tamil National Alliance (TNA) for 1,474 petitioners who requested that the Court of Appeal halt the Government of Sri Lanka's plan to re-possess land under the *Land Acquisition Act No. 9 of 1950* in the Valikamam North area

5. designated as a high-security zone; Colombo Telegraph, "Appeal Court issues Notice on Respondents in cases by 2176 Jaggna Tamils seeking relief against land grab by Rajapaksa regime," 30 May 2013; Colombo Telegraph, "Jaffna Tamils Land Grab FR Cases: Justice Sripavan Advises DSG how to grand lands correctly," (12 June 2013); A Mittal, "The Long Shadow of the War: The Struggle for Justice in Postwar Sri Lanka," *The Oakland Institute*, 2015 at 15 [hereinafter referred to as *Mittal*]; Mittal refers to the military occupation of Valikamam North for which the Supreme Court in 2006 acknowledged the title deeds of Tamil IDPs and confirmed their right to ownership of the confiscated private land.

6. Colombo Page, "Sri Lanka President promises land to war displaced in camps within six months," 3 January 2016.

7. Colombo Page, "Sri Lankan President says will not remove Army camps from North but will release lands to people," 12 November 2017.

8. Tamil Guardian, "Sri Lankan military base constructs new entrance." 13 February 2018; Tamil Guardian, "Army attempts to appropriate destroyed LTTE cemetery, angering Mullaitivu residents." 22 March 2018.

9. Sri Lanka Army. "New Officer Mess of 621 Brigade Opened with All Facilities," 27 December 2017.

10. Sri Lanka Army, "New Facility Complex at SFHQ-KLN Opened for All Ranks," 14 February 2018.

11. For example, *see* Dharsha, Jegatheeswaran, Adayalaam Centre for Policy Research (ACPR), "Civil Security Department: The Deep Militarisation of the Vanni" (20 September 2017) [hereinafter referred to as *The Deep Militarisation of the Vanni*].

12. Adayaalam Centre for Policy Research (ACPR) and People for Equality and Relief in Lanka (PEARL), "Mapping the Militarisation in Mullaitivu," 4 October 2017 at 7 [hereinafter referred to as *Militarisation of Mullaitivu*.

13. *Militarisation of Mullaitivu, supra* note 12 at 10-12; Tamil Guardian, "Sri Lankan Army renovates Buddhist Vihara in Kilinochchi" (13 July 2017; see B. Blodgett, "Sri Lanka's Military: The Search for a Mission" (2004), Aventine Press at 54.

14. Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998 at article 7(1), article 7(2)(a) and article 7(2)(a) of the Rome Statute states that attack means "a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;…"; International Criminal Court (ICC), *Elements of Crimes*, 2011, ISBN No 92-9227-232-2 at 5.

15. *Prosecutor v Krnojelac*, IT-97-25-T, Judgment (15 March 2002) at para 54 (International Criminal Tribunal for the former Yugoslavia, Trial Chamber; the Trial Chamber in *Krnojelac* distinguished that the notion of an attack from armed conflict as an attack "could outlast, precede or run parallel to the armed conflict, without necessarily being part of it,"; *Prosecutor v Jadranko Prli?,* IT-04-74-T, Judgment (29 May 2013) at para 35 (International Criminal Tribunal for the former Yugoslavia, Trial Chamber).

16. *Prosecutor v Akayesu*, ITCR-96-4-T, Judgment (2 September 1998) at para 581 (International Criminal Tribunal for Rwanda, Trial Chamber).

17. *Prli?, supra* note 15*; Prosecutor v Radovan Karadži?*, IT-95-5/18-T, Public Redacted Version of Judgement Issued on 24 March 2016 – Volume I of IV (24 March 2016) at para 473 (International Criminal Tribunal for the former Yugoslavia, Trial Chamber).

18. Camelia Nathaniel, 'We Have No Role in Politics – Maj. Gen. Mahinda Hathurusinghe," *Sunday Leader*, 15 September 2013.

19. Tamil Guardian, "Sri Lankan president denounces war crimes accusations and hits out at Tamil diaspora", 21 May 2018; President's Media Division, "President says that it is a shame failing to identify the true identity of the terrorist and a war hero", 19 May 2018.

20. *The Deep Militarisation of the Vanni*, *supra* note 11 at 17-20; For example, Jegatheeswaran assesses the militarization project by the Civil Security Department as a form of control by creating economic dependencies that Tamil communities must rely on; See generally A. Satkunanthan, "Militarisation as panacea: development and reconciliation in post-war Sri Lanka" (19 March 2013).

21. Several of the reports discussed establish the fact that the military and the Government of Sri Lanka are the main perpetrators of this state plan.

22. This point is further elaborated upon later in the article.

23. The length of time of an attack is not necessarily limited to a short period of time; *Prosecutor v Kaing Guek Eav (Duch)*, 001/18-07-2007-ECCC/SC, Appeals Judgement (3 February 2012) at para 320 (Extraordinary Chambers in the Courts of Cambodia, Appeals Chamber); *Prosecutor v Omar Hassan Ahmad Al Bashir*, ICC-02/05-01/09-3, Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir (4 March 2009) (International Criminal Court, Pre-Trial Chamber I).

24. Elements of Crimes, *supra* note 14 at 5; Rome Statute, *supra* note 14 at Article 7(1), Article 7(2)(a); Article 7(1) of the Rome Statute states, "1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack…".

25. *Prosecutor v Jovica Staniši? and Franko Simatovi?,* IT-03-69-T, Judgment (30 May 2013) at para 964 (International Criminal Tribunal for the former Yugoslavia, Trial Chamber); *Karadži?*, *supra* note 17 at para 474; *Prosecutor v Periši?*, IT-04-81-T, Judgment (6 September 2011) at para 83 (International Criminal Tribunal for the former Yugoslavia, Trial Chamber); *Prosecutor v Kunarac, Kovac and Vukovic*, IT-96-23-T, Judgment (22 February 2001) at para 90, 425 (International Criminal Tribunal for the former Yugoslavia, Trial Chamber); *Prosecutor v Blaški?*, IT-95-14-A, Appeals Judgment (29 July 2004) at para 95 (International Criminal Tribunal for the former Yugoslavia, Appeals Chamber).

26. *Kunarac*, *supra* note 25 at para 90; *Blaški?*, *supra* note 25 at para 95.

27. *Militarisation of Mullaitivu*, *supra* note 12 at 2; the ACPR and PEARL describe the rationale for a heavy military presence by the Sri Lankan state, "The disproportionate presence of the security forces in the North-East is argued as being essential to prevent another armed insurrection from within the Tamil community against the State,"; People for Equality and Relief in Sri Lanka (PEARL Action), "Withering Hopes: Historic window of opportunity for reconciliation will close if Sri Lanka fails to act on accountability and militarization," April 2016 at 9, 12 [hereinafter referred to as *PEARL – Withering Hopes*]; For example, PEARL discusses the militarization of Tamil lands, civilian institutions and the economy.

28. This point is reiterated by a number of sources. B Fonseka, "Land Occupation in the Northern Province: A Commentary on Ground Realities and Recommendations for Reform," *Centre for Policy Alternatives*, March 2016 at 12, 15 [hereinafter referred to as *Fonseka*]; Fonseka reports that in March 2016 the protracted displacement of IDPs was largely due to the military occupation of vast amounts of land; B. Fonseka & D. Jegatheeswaran, "Politics, Policies and Practices with Land Acquisitions and Related Issues in the North and East of Sri Lanka," *Centre for Policy Alternatives*, November 2013 at 45 [hereinafter referred to as *Fonseka & Jegatheeswaran*]; Fonseka and Jegatheeswaran interviewed those in Valikamam whose ancestral private lands were military occupied in their study.

29. Rome Statute, *supra* note 14 at Article 7(1); Elements of Crimes, *supra* note 21 at 5.

30. *Staniši?* and *Simatovi?*, *supra* note 25 at para 963; *Prosecutor v Kordi? and Cerke*z, IT-95-14/2-T, Judgment (26 February 2001) at para 427(International Criminal Tribunal for the former Yugoslavia, Trial Chamber); *Prosecutor v Jelisi?*, IT-95-10-T (14 December 1999) at para 53 (International Criminal Tribunal for the former Yugoslavia, Trial Chamber).

31. *Prosecutor v Kunarac, Kovac and Vukovic,* IT-96023 & IT-96-23/1-A, Appeals Judgment (12 June 2002) at para 179 (International Criminal Tribunal for the former Yugoslavia, Appeals Chamber).

32. *Land Acquisition Act No. 9 of 1950*, *supra* note 3.

33. A. Mittal & E. Fraser, "Waiting to Return Home: Continued Plights of IDPs in Post-War Sri Lanka, *The Oakland Institute*, 2016 at 4-6 [hereinafter referred to as *Mittal & Fraser*].

34. Rome Statute, *supra* note 14 at Article 7(1), Article 7(2)(a) – (k); Elements of Crimes, *supra* note 14 at 5.

35. Rome Statute, *supra* note 14 at Article 7(2)(g); Article 7(2)(g) defines ‘persecution’ as “the intentional or severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.”

36. *Prosecutor v Kupreški? et al*, IT-92-23-T and IT-96-23/1-A, Appeals Judgment (12 June 2001) at para 361 (International Criminal Tribunal for the former Yugoslavia, Appeal Chamber).

37. *Prosecutor v Tadi*?, IT-94-1-T, Judgment (7 May 1997) at para 710 (International Criminal Tribunal for the former Yugoslavia, Trial Chamber); the Trial Chamber stated that persecution may entail acts that are, “…those of a physical, economic or judicial nature, that violate an individual’s right to equal enjoyment of his basic rights.”

38. *Blaškic*, *supra* note 25 at para 227.

39. *Kordi?* and *Cerke*z, *supra* note 30 at para 537.

40. *Ibid*; The Trial Chamber stated, “If the ultimate aim of persecution is the ‘removal of those persons from the society in which they live alongside the perpetrators, or eventually even from humanity itself’, the widespread or systematic, discriminatory, destruction of individuals’ homes and means of livelihood would surely result in such a removal from society. In the context of an overall campaign of persecution, rendering a people homeless and with no means of economic support may be the method used to ‘coerce, intimidate, terrorise and forcibly transfer … civilians from their homes and villages.”

41. *Karadži?*, *supra* note 17 at para 528.

42. *Kordi?* and *Cerke*z, *supra* note 30 at para 205.

43. Elements of Crimes, *supra* note 14 at 10; the Elements of Crimes states for this element of persecution that, “The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights.”

44. *Blaški?*, *supra* note 25 at para 220; the Trial Chamber in *Blaški?* that, “There is no doubt that serious bodily and mental harm and infringements upon individual freedom may be characterized as persecution when…they target the members of a group because they belong to a specific community. The Trial Chamber considers that infringements of the elementary and inalienable rights of man, which are ‘the right to life, liberty and security of the person…by their very essence may constitute persecution when committed on discriminatory grounds; *Kupreški?* , *supra* note 36 at para 623; the right to security of the person is a fundamental right under the following international covenants; Universal Declaration of Human Rights, G A res 217A (III), UN Doc A/810 at 71 (1948); Article 3 states, “Everyone has the right to life, liberty and security of the person,”; International Covenant on Civil and Political Rights (ICCPR), G A res 2200A (XXI), 21 UN GAOR Supp (No 16) at 52, UN Doc A/6316 (1966), 999 UNTS 171, entered into force Mar 23, 1976.

45. For example, Mittal & Fraser, *supra* note 33 at 5-6; Mittal & Fraser documented the impact of the military occupation of private land owned by Tamil IDPs in the region of Sampoor, attributing the poor quality of lands offered for resettlement, such as in Palaly, to the inability of relocated Tamil IDPs to sustain themselves, and the fact that the military has entered the business sector by operating luxury resorts and golf courses.

46. Tamil Guardian, “Ongoing Navy Occupation of Most of Myliddy Preventing Fishing and Resettlement”, 11 February 2018.
47. International Crisis Group, “Sri Lanka’s Transition to Nowhere,” 16 May 2017.
48. *Blaški?*, *supra* note 25 at para 220.
49. *The Deep Militarisation of the Vanni*, *supra* note 11 at 6-8; A notable example is that the Civil Security Department (CSD) of the Sri Lankan military has recruited former female LTTE combatants to be employed in pre-schools and CSD-run farms in the Vanni that are administrated by Sri Lankan military forces.
50. Sri Lanka Campaign for Peace and Justice, “Ethical Tourism; Who to Avoid.
51. *See* for example, Joint Civil Society Submission to the UN Periodic Review of Sri Lanka, 28th Session (30 March 2017) at 8; The submission documented the involvement of the military in civilian activities in that has inhibited local industry growth for Tamil IDPs and survivors post-war.
52. *Blaški?, supra* note 25 at 234.
53. Elements of Crimes, *supra* note 14 at 10; the Elements of Crimes states that the second element for persecution is, “2. The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such,”; the Elements of Crimes states that the third element is, “Such targeting was based on political, racial, national, ethnic, cultural, religious, gender as defined in article 7, paragraph 3 of the Statute, or other grounds that are universally recognized as impermissible under international law,”; *Prosecutor v Vujadin Popovic*, IT-05-88-A, Appeals Judgement (30 January 2015) at para 742 (International Criminal Tribunal for the former Yugoslavia, Appeals Chamber); *Kupreški?*, *supra* note 36 at para 636; *Krnojelac*, *supra* note 15 at 435; the Trial Chamber in *Krnojelac* stated, “There is no requirement under persecution that a discriminatory policy exist or that, in the event that such a policy is shown to have existed, the accused has taken part in the formulation of such discriminatory policy or practice by a governmental authority.”
54. *Blaški?, supra* note 25 at para 233.
55. *Kaing, supra* note 23 at para 272;
56. Elements of Crimes, *supra* note 14 at 10; the Elements of Crimes states that the fifth element for the crime against humanity of persecution is, “5. The conduct was committed as part of a widespread or systematic attack directed against a civilian population,”; the Elements of Crimes states that the sixth element for persecution as a crime against humanity is, “6. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.”
57. *Karadži?*, *supra* note 17 at para 536.
58. Nathaniel, *supra* note 18; Frederica Jansz, “Gotabaya Rajapaksa -Three Years Later,”’ *Sunday Leader*, 27 May 2012 [hereinafter referred to as *Jansz*].
59. Elements of Crimes, *supra* note 14 at 10; the Elements of Crimes states that the fourth element for persecution is that, “4. The conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court.”

60. *Prosecutor v Naletili? and Martinovi?*, IT-98-34-T, Judgment (31 March 2003) at para 519 (International Criminal Tribunal for the former Yugoslavia, Trial Chamber).

61. Rome Statue, *supra* note 14 at Article 7(2)(d).

62. B. Fonseka, "Land Occupation in the Northern Province: A Commentary on Ground Realities and Recommendations for Reform," March 2016 at 15 [hereinafter referred to as *Land Occupation in the Northern Province*].

63. Society for Threatened Peoples, "Under the Military's Shadow: Local Communities and Militarization in the Jaffna Peninsula," October 2016 at 21 [hereinafter referred to as *Society for Threatened Peoples Report*]; N. Roland and A. Fernando, UCA News, "Little hope for displaced Sri Lankans to have land returned," 3 March 2016.

64. Internal Displacement Monitoring Centre (IDMC) & Norwegian Refugee Council, "Sri Lanka: Almost give years of peace but tens of thousands of war-displaced still without solution," 4 February 2014 at 33.

65. United States (US) Department of State, "Sri Lanka 2017 Human Rights Report," at 14.

66. Tamil Guardian, "Iranaitivu villagers sale back to their occupied land in daring protest," 25 April 2018.

67. Groundviews, "One Year in Keppapilavu: On the Resistence to Military Occupation and Continued Challenges for Resettlement," 3 May 2018.

68. *PEARL Delayed or Denied*, *supra* note 1 at 44; PEARL reports that as of May 14th, 2018, the people of Iranaitivu protested for 378 days and the people of Keppapilavu protested for 468 days against their displacement caused by years of military occupation of their private lands.

69. Elements of Crimes, *supra* note 14 at 6; the Elements of Crimes states that the first element for the crime against humanity of forcible transfer of population is, "1. The perpetrator deported or forcibly transferred, without grounds permitted under international law, one or more persons to another State or location, by expulsion or other coercive acts."

70. *Prosecutor v Dordevi?*, IT-05-87/1-A, Appeals Judgment (27 January 2014) at para 727 (International Criminal Tribunal for the former Yugoslavia, Appeals Chamber; in *Dordevi?,* it was determined that, "…physical force but includes the threat of force and coercion…or by taking advantage of a coercive environment; Elements of Crimes, *supra* note 14 at 6; the Elements of Crimes defines the term 'forcibly' as "not restricted to physical force, but may include threat of force or coercion, such as that caused by dear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment."

71. *Knrojelac, supra* note 15 at para 475.

72. *Prli?, supra* note 17 at para 51; in *Prli?*, the Trial Chamber stated, "…the mere threat of resorting to force or physical or mental coercion may be enough, if the targeted population facing this coercive climate or these threats, has no other choice but to leave its territory. It is the absence of genuine choice that renders removal unlawful. To determine whether the victims of a forcible removal faced a genuine choice, the circumstances surrounding their removal must be assessed."

73. Mittal, *supra* note at 15.

74. Tamil Guardian, "Renovated Kilinochchi school grounds re-seized by Sri Lankan Army," 6 April 2018; Tamil Guardian, "Sri Lanka's army commander warns Tamils: as we give to you, we can take back," 4 April 2018.

75. People for Equality and Relief in Lanka (PEARL), Fact Sheet, "Examples of Military Canteens and Shops in Maritimepattu DS Division, Mullaitivu," (May 2018).

76. Tamil Guardian, "Sri Lankan army builds tennis court at occupying Mullaitivu base," 21 April 2018.

77. *Militarisation of Mullaitivu*, *supra* note 12 at 11,21; For example, the ACPR and PEARL refer to the establishment of three war museums in the Mullaitivu area marking the military's establishment into the tourism industry, reporting on the increased 'Buddhisizaton' of the Mullaitivu District through military-built Buddhist temples on both state and private land; Elizabeth Fraser, "Justice Denied: A Reality Check on Resettlement, Demilitarization, and Reconciliation in Sri Lanka," *The Oakland Institute,* 2017 at 10; Mittal, *supra* note 73 at 25-29; Mittal refers to the Sinhalization of the North by the military's establishment of war victory memorials. The war monuments include the War Hero Memorial in Mullaitivu in which a statute of a Sri Lankan military officer holds the national flag with a rifle; Mittal, *supra* note 3 at 27; In October 2013, Defence Secretary Rajapaksa and Army Commander inaugurated a new Buddhist statute known as the Manikulam Sri Sugatha Viharaya in the Vanni region, claiming the area to be a place that Buddhists have historically worshipped. In Kaladi, Mittal reported that 78 acres of private land were unlawfully seized by a monk who built a Buddhist vihara where a former preschool existed.

78. Tamil Guardian, "Families return to destroyed homes as 36 acres released in Vali North," 27 May 2018.

79. Tamil Guardian. "Myliddy fishermen struggle to rebuild livelihood with inadequate government support," 30 July 2017.

80. Elements of Crimes, *supra* note 14 at 6; the Elements of Crimes states that the second element of the crime against humanity of forcible transfer of population is, "2. Such person or persons were lawfully present in the area from which they were so deported or transferred."

81. *Karadži?*, *supra* note 17 at para 491.

82. *Popovic*, *supra* note 53 at para 896.

83. *Karadži?*, *supra* note 17 at para 488-491.

84. Elements of Crimes, *supra* note 14 at 7; the Elements of Crimes states that the third element for the crime against humanity of forcible transfer of population, “3. The perpetrator was aware of the factual circumstances that established the lawfulness of such presence.”

85. *Karadži?*, *supra* note 17 at para 493.

86. *Karadži?*, *supra* note 17 at para 493.

87. Elements of Crimes, *supra* note 14 at 7; the Elements of Crimes states that the fourth element for the crime against humanity of forcible transfer of population is, “4. The conduct was committed as a part of a widespread or systematic attack directed against a civilian population,”; the Elements of Crimes states that the fifth element for forcible transfer of population as a crime against humanity is, “5. The perpetrator knew that the conduct was part or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.”

88. Elements of Crimes, *supra* note 21 at 7; the Elements of Crimes states that the fourth element for the crime against humanity of forcible transfer of population is, “4. The conduct was committed as a part of a widespread or systematic attack directed against a civilian population,”; the Elements of Crimes states that the fifth element for forcible transfer of population as a crime against humanity is, “5. The perpetrator knew that the conduct was part or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.”

89. *Land Acquisition Act No. 9 of 1950*, *supra* note 3 at s 2(1).

90. International Criminal Court (ICC), “Office of the Prosecutor: Policy Paper on Case Selection and Prioritisation”, 15 September 2016 at para 41.